

## REAL ESTATE CONTRACT

THIS CONTRACT OF SALE is made by and between TEXAS HOTEL MANAGEMENT CORPORATION, a Texas Corporation, also known as THM, ("SELLER"), and the CITY OF COLLEGE STATION, TEXAS, a Texas Home Rule Municipal Corporation, situated in Brazos County, Texas ("BUYER"), upon the terms and conditions set forth herein.

### ARTICLE I PURCHASE AND SALE

1.1 SELLER agrees to sell and convey, and BUYER agrees to purchase and pay for, the following interests in the property:

- (1) a Right-of-Way Easement consisting of a 1.565 acre tract out of a 8.973 acre tract conveyed to THM in Volume 3051, Page 181 of the Official Records of Brazos County, Texas, more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof for all purposes ("PROPERTY A"), together with all and singular the rights and appurtenances pertaining to PROPERTY A, including all right, title and interest of SELLER in and to adjacent roads, streets, alleys or rights-of-way (all of such real property, rights, and appurtenances being herein referred to as "PROPERTY A"), together with SELLER's interest in any improvements and fixtures situated on and attached to PROPERTY A, for the consideration and subject to the terms, provisions, and conditions set forth herein; and
- (2) a Utility Easement consisting of a 0.17 acre tract out of a 8.973 acre tract conveyed to THM in Volume 3051, Page 181 of the Official Records of Brazos County, Texas, more particularly described by metes and bounds in Exhibit "B" attached hereto and made a part hereof for all purposes ("PROPERTY B").

1.2 This Contract by BUYER to purchase the interests in PROPERTY in Section 1.1 is subject to approval by the City Council of the City of College Station, Texas; such approval indicated by signature of BUYER's representatives to this CONTRACT OF SALE.

1.3 BUYER has requested University Title Company furnish a Commitment for Title Insurance (the "Title Commitment") to insure title to the BUYER for BUYER's review together with legible copies of all instruments referred to in the Title Commitment. The BUYER shall request the title company to furnish these items to BUYER within fifteen (15) calendar days of the date of this Contract. BUYER shall have a period of five (5) business days (the "Title Review Period") after receipt of the Title Commitment, the copies of the instruments referred to in Schedule B as exceptions, within which to notify SELLER of BUYER's objection to any item shown on or referenced by those documents (the "Reviewable Matters"). Any Reviewable Matter

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to which BUYER does not object within the Title Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at its election, on or before closing, attempt to cure same. If SELLER fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either (a) waive such objections and accept such title as SELLER is able to convey or (b) terminate this Contract by written notice to the Title Company and to SELLER, in which case the earnest money shall be refunded to BUYER, and neither SELLER nor BUYER shall have any further rights or objections under this Contract.

1.4 (a) BUYER at its expense, will provide a survey of PROPERTY A and PROPERTY B, showing, without limitation, all adjacent property lines, record ownership of adjoining properties, encroachments, easements, rights-of-way and other encumbrances of record. The survey will reflect any encroachments onto or by PROPERTY A and PROPERTY B onto adjoining properties. BUYER shall have a period of five (5) business days (the "Survey Review Period") after receipt of the Survey within which to notify SELLER of BUYER's objection to any item shown on or referenced on the Survey. Any Reviewable Matter to which BUYER does not object within the Survey Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at its election, on or before closing, attempt to cure same. If SELLER fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either (a) waive such objections and accept such title as SELLER is able to convey or (b) terminate this Contract by written notice to the Title Company and to SELLER, in which case any earnest money shall be refunded to BUYER, and neither SELLER nor BUYER shall have any further rights or objections under this Contract.

(b) The survey drawing shall be addressed to and certified in favor of the BUYER and the Title Company. The field notes descriptions, as prepared by the surveyor, shall be substituted for the descriptions attached to this Contract and shall be used in the Right-of-Way Easement and Utility Easement.

1.5 The parties agree that general real estate taxes on the PROPERTY for the then current year, interest on any existing indebtedness, and rents, if any, shall be prorated as of the closing date and shall be adjusted in cash at the closing. SELLER alone shall be liable for any taxes assessed and levied for prior years resulting from any change in use subsequent to the conveyance to BUYER. If the closing shall occur before the tax rate is fixed for the current year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation. All installments that have matured prior to the closing date on any special taxes or assessments shall be paid by SELLER; and any installments that are provided in the special assessment to mature after closing shall be assumed by BUYER.

1.6 The sale of the PROPERTY A shall be made by Right-of-Way Easement from SELLER to BUYER in the form attached as Exhibit "C" and the sale of PROPERTY B shall be made by Utility Easement from SELLER to BUYER in the form attached as Exhibit "D".

## ARTICLE II PURCHASE PRICE

2.1 The total purchase price for both PROPERTY A and PROPERTY B shall be ONE HUNDRED TWELVE THOUSAND TWO HUNDRED FIFTY-THREE AND NO/100 DOLLARS (\$112,253.00) apportioned as follows:

(a) The sum of ONE HUNDRED TWO THOUSAND TWO HUNDRED FIFTY-SIX AND NO/100 DOLLARS (\$102,256.00) for the 1.565 acre Right-of-Way Easement (PROPERTY A); and

(b) The sum of NINE THOUSAND NINE HUNDRED NINETY-SEVEN AND NO/100 DOLLARS (\$9,997.00) for the 0.17 acre Utility Easement (PROPERTY B).

The total purchase price shall be payable in full at closing.

## ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

3.1 SELLER hereby represents and warrants to BUYER as follows:

(a) SELLER has the full right, power, and authority to enter into and perform its obligations under this Contract.

(b) SELLER has no actual knowledge of any parties in possession of any portion of either PROPERTY A or PROPERTY B, either as lessees, tenants at sufferance, trespassers, or other persons in possession. Additionally, SELLER has no actual knowledge of any action by adjacent landowners, or any natural or artificial conditions upon either PROPERTY A or PROPERTY B, or any significant adverse fact or condition relating to the PROPERTY, which has not been disclosed in writing to BUYER by SELLER, which would prevent, limit, impede or render more costly BUYER's contemplated use of either PROPERTY A or PROPERTY B.

(c) SELLER has no actual knowledge of any pending or threatened condemnation or similar proceedings or assessment affecting either PROPERTY A or PROPERTY B or any part thereof. SELLER has no actual knowledge of any such proceedings or assessments contemplated by any governmental entity.

(d) SELLER has no actual knowledge that either PROPERTY A or PROPERTY B does not have full and free access to and from public highways, streets, or roads. SELLER has no actual knowledge that there are pending or threatened governmental proceedings that would impair or result in the termination of such access. If SELLER obtains actual knowledge of any such matter subsequent to the date of this Contract that would make any of the representations or

warrant es untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Contract and receiving back its earnest money, in which case neither party shall have any further obligation to the other.

(e) Neither PROPERTY A nor PROPERTY B has not been illegally subdivided or otherwise held, managed, or maintained in violation of any federal, state, or local law.

(f) SELLER has no actual knowledge that SELLER has not complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to either PROPERTY A or PROPERTY B or any part thereof.

(g) If SELLER obtains actual knowledge of any such matter subsequent to the date of this Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Contract and receiving back its earnest money, in which case neither party shall have any further obligation to the other.

(h) SELLER has no knowledge that either PROPERTY A or PROPERTY B contains any environmental hazard not shown on the environmental assessment provided by SELLER to BUYER.

(i) SELLER is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e., SELLER is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(j) To the best of SELLER's knowledge there are no unpaid charges, debts, liabilities, claims or obligations arising from any construction, occupancy, ownership, use or operation of either PROPERTY A or PROEPRTY B, or the business operated thereon, if any, which could give rise to any mechanic's or materialmen's or other statutory lien against either PROPERTY A or PRCPERTY B, or any part thereof, or for which BUYER will be responsible.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

4.1 BUYER represents and warrants to SELLER as of the effective date and as of the closing date that:

(a) BUYER has the full right, power, and authority to purchase both PROPERTY A and PPROPERTY B from SELLER as provided in this Contract and to carry out BUYER's obligations under this Contract, and all requisite action necessary to authorize BUYER to enter into this Contract and to carry out BUYER's obligations hereunder has been obtained or on or before closing will have been taken.

## ARTICLE V CLOSING

5.1 The closing shall be held at University Title Company, within forty-five (45) calendar days from the execution and tender of this Contract by BUYER, at such time and date as SELLER and BUYER may agree upon (the "closing date").

5.2 At the closing, SELLER shall:

(a) Deliver to BUYER a duly executed and acknowledged Right-of-Way Easement conveying good and indefeasible title in PROPERTY A, free and clear of any and all liens, and encumbrances, except for the Reviewable Matters and subject to the BUYER's election to terminate this Contract in the event BUYER disapproves of any Reviewable Matter, which objection is to be cured by SELLER on or prior to the closing as provided by Article I of this Contract.

(b) Deliver to BUYER a duly executed and acknowledged Utility Easement for PROPERTY B, free and clear of any and all liens and encumbrances, except to the Reviewable Exceptions and subject to the BUYER's election to terminate this Contract in the event BUYER disapproves of any Reviewable Exception, which objection is to be cured by SELLER on or prior to closing as provided by Article I of this Contract.

(c) Deliver possession both PROPERTY A and PROPERTY B to BUYER.

(d) Deliver to BUYER, at BUYER's expense, a Title Policy insuring marketable title issued by University Title Company, in BUYER's favor in the full amount of the purchase price, insuring BUYER's easement interest in both PROPERTY A and PROPERTY B, subject only to such exceptions as shown on the Title Commitment and not objected to by BUYER prior to closing.

(e) Pay one-half (1/2) of the escrow fees.

(f) Pay any and all required property taxes and prorated taxes for the year 2000.

(g) Pay any and all homeowner's or maintenance fees for prior years and for the current year prorated up to the date of closing.

(h) Pay the costs to obtain, deliver and record releases or partial releases of all liens to be released at closing.

(i) Pay the costs to record all documents to cure title objections agreed to be cured by Seller.

- (j) Pay the certificates or reports of ad valorem taxes.
  - (k) Pay the Seller's expenses and attorney fees.
- 5.3 Upon such performance by SELLER at closing, BUYER shall:
- (a) Pay the balance of the purchase price and the below-listed closing costs.
  - (b) Pay one-half (½) of the escrow fees.
  - (c) Pay the cost to prepare the Right-of-Way Easement and the Utility Easement documents.
  - (d) Pay the title insurance.
  - (e) Pay the costs to obtain, deliver and record all documents other than those to be recorded at Seller's expense.
  - (e) Pay the Buyer's expenses, or attorney fees.
  - (f) Pay the additional premium for the survey/boundary deletion in the title policy, if the deletion is requested by Buyer.
  - (g) Pay the costs of work required by Buyer to have the survey reflect matters other than those required under this contract.

ARTICLE VI  
SPECIAL CONDITIONS

NONE

ARTICLE VII  
BREACH BY SELLER

7.1 In the event SELLER fails to fully and timely perform any of its obligations under this Contract or fails to consummate the sale of both PROPERTY A and PROPERTY B for any reason except BUYER's default, BUYER may:

- (a) Enforce specific performance of this agreement; and/or
- (b) Bring suit for damages against SELLER.

**ARTICLE VIII  
BREACH BY BUYER**

8.1 In the event BUYER fails to consummate the purchase of both PROPERTY A and PROPERTY B (BUYER being in default and SELLER not being in default hereunder), SELLER shall have the right to bring suit against BUYER only for expectancy and incidental damages, if any.

**ARTICLE IX  
MISCELLANEOUS**

9.1 Survival of Covenants: Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to the period of time following the closing date, shall survive the closing and shall not be merged by deed or otherwise be extinguished.

9.2 Notice: Any notice required or permitted to be delivered by this Contract shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to SELLER or BUYER, as the case may be, at the addresses set forth below:

SELLER: Texas Hotel Management Corporation  
a/k/a THM  
P.O. Box 7764  
Bryan, Texas 77805

BUYER: City of College Station  
Legal Department  
1101 Texas Avenue  
College Station, Texas 77840

9.3 Texas Law to Apply: This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by this Contract are to be performed in Brazos County, Texas.

9.4 Parties Bound: This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. The persons executing this Contract do so in their capacities as set forth below and in no other capacity whatsoever, and such persons shall have no personal liability for executing this Contract in a representative capacity. All such liability is limited to the principal for which they execute this document as a representative.

9.5 **Invalid Provision:** In case any one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in the Contract. In lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Contract a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

9.6 **Construction:** The parties acknowledge that each party and its counsel have reviewed and revised this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits hereto.

9.7 **Prior Agreements Superseded:** This Contract embodies the entire agreement of the parties and supersedes any and all prior understandings or written or oral agreements between the parties respecting subject matter within and may only be amended or supplemented by an instrument in writing executed by the party against whom enforcement is sought.

9.8 **Time of Essence:** Time is of the essence to this Contract.

9.9 **Gender:** Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

9.10 **Multiple Counterparts:** This Contract may be executed in a number of identical counterparts. If so executed, each of the counterparts shall, collectively, constitute but one agreement. In making proof of this Contract it shall not be necessary to produce or account for more than one counterpart.

9.11 **Memorandum of Contract:** Upon request of either party, both parties shall promptly execute a memorandum of this agreement suitable for filing of record.


EXECUTED on this the 20 day of December, 2000.

SELLER:

BUYER:

TEXAS HOTEL MANAGEMENT  
CORPORATION, a/k/a THM

CITY OF COLLEGE STATION

BY:   
SALIM ISMAIL  
President

BY: \_\_\_\_\_  
LYNN McILHANEY, Mayor  
Date: \_\_\_\_\_



ATTEST:

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Connie Hooks, City Secretary

APPROVED:

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Thomas E. Brymer, City Manager

Date: \_\_\_\_\_

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Charles Cryan, Director of Fiscal Services

Date: \_\_\_\_\_

STATE OF TEXAS       )  
                              )  
COUNTY OF BRAZOS    )

## ACKNOWLEDGMENT

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2000, by LYNN McILHANEY as Mayor of the CITY OF COLLEGE STATION, a Texas Home Rule Municipal Corporation, on behalf of said municipality.

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NOTARY PUBLIC in and for  
The STATE OF TEXAS

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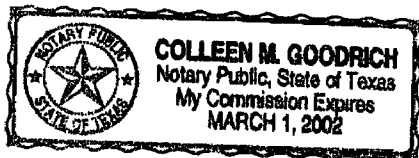
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STATE OF TEXAS            )  
                                  )     ACKNOWLEDGMENT  
COUNTY OF BRAZOS        )

This instrument was acknowledged before me on the 20 day of December, 2000, by SALIM ISMAIL as President of TEXAS HOTEL MANAGEMENT CORPORATION, a Texas Corporation, also known as THM, on behalf of said corporation.

  
NOTARY PUBLIC in and for  
The STATE OF TEXAS



**Dartmouth Drive Extension  
1.565 Acre Tract  
Morgan Rector Survey, A-46  
College Station, Brazos County, Texas**

Field notes of a 1.565 acre tract or parcel of land, lying and being situated in the Morgan Rector Survey, Abstract No. 46, College Station, Brazos County, Texas, and being part of the called 8.973 acre tract described in the deed from John M. Griffin to THM, as recorded in Volume 3051, Page 181, of the Official Records of Brazos County, Texas, and said 1.565 acre tract being more particularly described as follows:

**BEGINNING** at the  $\frac{1}{2}$ " iron rod found marking the north corner of the beforementioned 8.973 acre tract, same being the west corner of the C. W. Henry - 2.991 acre tract described in the deed recorded in Volume 2956, Page 171, of the Official Records of Brazos County, Texas, and same being in the southeast line of Dartmouth Crossing Subdivision, according to the plat recorded in Volume 3127, Page 15, of the Official Records of Brazos County, Texas, and same being the east corner of the southeast end of the existing right-of-way of Dartmouth Drive (90' wide right-of-way), from which a 3" creosote post fence corner bears S  $34^{\circ} 51' 31''$  E - 0.8 feet;

**THENCE** S  $47^{\circ} 27' 53''$  E along the northeast line of the beforementioned 8.973 acre tract, same being the southwest line of the beforementioned 2.991 acre tract, adjacent to fence, at a distance of 596 feet, a 4" creosote post fence corner bears northeast - 0.8 feet, continue on, leaving said fence, for a total distance of 756.45 feet to a  $\frac{1}{2}$ " iron rod found (bent) marking the east corner of the 8.973 acre tract in the northwest line of Krenak Tap Road, same being the south corner of the 2.991 acre tract;

**THENCE** S  $42^{\circ} 32' 06''$  W along the southeast line of the beforementioned 8.973 acre tract, same being the northwest line of Krenak Tap Road for a distance of 115.00 feet to a  $\frac{1}{2}$ " iron rod set at the beginning of a transition curve from Krenak Tap Road to the proposed extension of Dartmouth Drive, concave to the west, having a radius of 25.00 feet;

**THENCE** through the interior of the beforementioned 8.973 acre tract and along the proposed southwest right-of-way line of Dartmouth Drive extension, as follows:

Northerly along said curve for a length of 39.27 feet to a  $\frac{1}{2}$ " iron rod set at the end of this curve, the chord bears N  $02^{\circ} 27' 54''$  W - 35.36 feet,

N  $47^{\circ} 27' 53''$  W for a distance of 730.62 feet to a  $\frac{1}{2}$ " iron rod set in the northwest line of the beforementioned 8.973 acre tract at the south corner of the existing Dartmouth Drive right-of-way;

**THENCE** N  $42^{\circ} 00' 12''$  E along the northwest line of the beforementioned 8.973 acre tract, same being the southeast end of the existing Dartmouth Drive right-of-way for a distance of 90.00 feet to the **PLACE OF BEGINNING**, containing 1.565 acres of land, more or less.



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Surveyed February 2000

By:

S. M. Kling  
R.P.L.S. No. 2003

**EXHIBIT A**

**10' Wide Utility Easement  
0.17 Acre  
Adjoining Southwest line of Dartmouth Drive Extension  
Morgan Rector Survey, A-46  
College Station, Brazos County, Texas**

Field notes of a 10' wide utility easement, lying and being situated in the Morgan Rector Survey, Abstract No. 46, College Station, Brazos County, Texas, and being part of the called 8.973 acre tract described in the deed from John M. Griffin to THM, as recorded in Volume 3051, Page 181, of the Official Records of Brazos County, Texas, and said easement being more particularly described as follows:

COMMENCING at the  $\frac{1}{4}$ " iron rod found marking the north corner of the beforementioned 8.973 acre tract, same being the west corner of the C. W. Henry - 2.991 acre tract described in the deed recorded in Volume 2956, Page 171, of the Official Records of Brazos County, Texas, and same being in the southeast line of Dartmouth Crossing Subdivision, according to the plat recorded in Volume 3127, Page 15, of the Official Records of Brazos County, Texas, and same being the east corner of the southeast end of the existing right-of-way of Dartmouth Drive (90' wide right-of-way), from which a 3" creosote post fence corner bears S 34° 51' 31" E - 0.8 feet;

THENCE S 42° 00' 12" E along the northwest line of the beforementioned 8.973 acre tract, same being along the southeast end of the existing Dartmouth Drive right-of-way for a distance of 90.00 feet to a  $\frac{1}{4}$ " iron rod set at the **PLACE OF BEGINNING** of this description, same being the south corner of Dartmouth Drive;

THENCE S 47° 27' 53" E entirely across the beforementioned 8.973 acre tract, along the southwest line of Dartmouth Drive right-of-way extension, parallel with and 100 feet southwest of the northeast line of the 8.973 acre tract at a distance of 730.62 feet, pass a  $\frac{1}{4}$ " iron rod set at the beginning of the transition curve from Dartmouth Drive extension to Krenek Tap Road, continue on for a total distance of 755.61 feet to a  $\frac{1}{4}$ " iron rod set in the northwest line of Krenek Tap Road, from which a  $\frac{1}{4}$ " iron rod found marking the east corner of the 8.973 acre tract bears N 42° 32' 06" E - 90.00 feet;

THENCE S 42° 32' 06" W along the southeast line of the beforementioned 8.973 acre tract, same being the northwest line of Krenek Tap Road for a distance of 10.00 feet to a  $\frac{1}{4}$ " iron rod set;

THENCE N 47° 27' 53" W across the beforementioned 8.973 acre tract, parallel with and 100 feet southwest of the northeast line of the 8.973 acre tract for a distance of 755.52 feet to a  $\frac{1}{4}$ " iron rod set in the northwest line of the 8.973 acre tract, same being the southeast line of Dartmouth Addition, according to the plat recorded in Volume 3068, Page 38, of the Official Records of Brazos County, Texas;

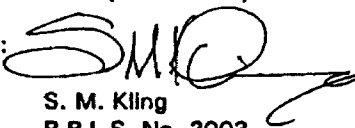
THENCE N 42° 00' 12" E along the northwest line of the beforementioned 8.973 acre tract, same being the southeast line of Dartmouth Addition for a distance of 10.00 feet to the **PLACE OF BEGINNING**, encompassing 0.17 acre of land, more or less within this easement.



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Surveyed February 2000

By:

  
S. M. Kling  
R.P.L.S. No. 2003**EXHIBIT B**